MEMORANDUM

SUBJECT: Penalty Justification for RCRA Violations Alleged Against the Alaska Department of Transportation and Public Facilities –Flint Hills Resources Alaska, LLC (AKD000850701) for Purposes of Settlement

FROM: Cheryl Williams, Compliance Officer

Thru: Scott Downey, Manager, Region 10 Air/RCRA Compliance Unit

TO: Andrew Boyd, Attorney, Region 10 Office of Regional Counsel

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This memorandum is to provide a penalty justification for RCRA violations alleged against the Flint Hills Alaska – North Pole Refinery (FHR) in accordance with the RCRA Civil Penalty Policy (RCPP). The violations and justification for penalties associated with those violations are described below.

SUMMARY OF TOTAL PROPOSED PENALTY

#	Count	Potential for Harm	Extent of Deviation	Gravity	Adjustment Factors	Economic Benefit	Total
1	Failure to make a hazardous waste determination groundwater filters containing iron sulfide scale[40 C.F.R. § 262.11]	Major	Major	$37,500		--	$37,500
2	Storage of hazardous waste in containers without a permit [40 C.F.R. § 270.1(c)]	Moderate	Major	$58,770[1]		--	$58,770
Total				$96,270.00[2]			**$96,270.00**

[1] For Count 2, a multi-day penalty was applied. The penalty for day 1 was $28,330 with an additional penalty of $254,180 ($1,420 x 179) for days 2-180. The total gravity-based penalty is $282,510.

[2] Pursuant to the memorandum from Grant Nakayama, dated December 29, 2008, the total applicable gravity-based penalty for all counts was rounded to the nearest unit of $100.

VIOLATIONS

Count 1. Failure to make a hazardous waste determination

BACKGROUND:
40 C.F.R. § 262.11 requires that a person who generates a solid waste, as defined in 40 C.F.R. § 261.2, must determine if that waste is a hazardous waste. The generator may make this determination based on analytical testing or by applying process knowledge in light of the materials or process used. If the waste is determined to be a hazardous waste, the generator must follow the requirements pertaining to the management of that waste. FHR failed to make a hazardous waste determination for groundwater filters containing iron sulfide as follows.

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Penalty Summary Table:

Count 1. Failure to make a hazardous waste determination for yellow highway paint A. Waste stored in containers B. Waste placed into the pit		
A. Gravity Based Penalty Potential for Harm: Major Extent of Deviation: Major Top of the Penalty Matrix Cell	$37,500	Comment 1A
B. Multi-day Penalty none	--	Comment 1B
Total Gravity Based Penalty	$37,500	
C. Adjustment Factors		Comment 1C
• Good Faith:	--	
• Willfulness/Negligence:	--	
• History of Noncompliance:	--	
• Other Unique Factors:	--	
Total Base Penalty	$37,500	
D. Economic Benefit	--	Comment 1D
Total Penalty	**$37,500**	

Comment 1A.
Potential for Harm: Major. Failure to make a hazardous waste determination increases the likelihood that hazardous waste will be improperly managed as non-hazardous waste. In this case, FHR failure to determine if the solid waste stored in the containers and placed into the pit was hazardous waste led to inappropriate management in a pit, which could have resulted in releases of hazardous constituents. According to the MSDS, the paint contains 0.69% chromium and 3% lead. Chromium has been found to be a carcinogen and lead is a probable carcinogen. Lead also affects the nervous system and can cause kidney and brain damage.

Failure to perform a HW determination also has a substantial adverse effect on the implementation of the RCRA program because it is the crucial first step in the regulatory system to ensure hazardous waste is properly managed.

Extent of Deviation: Major. One of the fundamental requirements in the proper management of hazardous waste is identifying those solid wastes that are subject to hazardous waste management requirements. By failing to perform a HW determination at the point of generation on the waste in the containers and the waste in the pit, DOT & PF deviated from requirements of the RCRA regulations to such an extent that a fundamental aspect of the requirements was not met, resulting in substantial noncompliance.

Selection of the exact penalty amount: According to the RCPP, the major/major penalty cell has a penalty range of $28,330 – 37,500. Although DOT & PF cooperated by performing a HW determination on the waste in the containers and by properly disposing of the container waste on a HW manifest, that determination was not made for more than five months after the waste was generated. Also, the failure to perform a timely HW determination resulted in the placement and treatment of hazardous waste in a pit without a permit. Given the seriousness of the violation and the size and sophistication of DOT & PF, a penalty at the top of the matrix cell was selected: $37,500.

Comment 1B.

Multi-day Penalty: According to the RCRA Civil Penalty Policy, multi-day penalties are assessed for days 2-180 for all violations designated as major potential for harm/major extent of deviation. However, making a HW determination is a one-time activity required at the point of generation, therefore a multi-day penalty for this violation is not warranted.

Comment 1C.

Degree of Willfulness and or Negligence for Count 1B: The facility personnel were negligent in failing to determine if the paint waste that was placed into the pit was hazardous at the point of generation. Specifically, as noted in DOT & PF's response to EPA's information request, they determined that waste paint stored in the containers was hazardous waste based on the "application of knowledge of the hazard characteristic of the waste." Yet a hazardous waste determination was not performed on the waste paint that was placed into the pit until after it was dry, months after the point of generation. The facility personnel were negligent in not applying their knowledge of the hazard characteristic of the paint previous to placing it in the pit. The facility failed to take reasonable precautions to ensure compliance. Therefore, the failure to make a waste determination demonstrated a degree of negligence, so an upward adjustment of 10% to the penalty is warranted. The 10% upward adjustment for negligence would add $3,750. However, because the penalty amount is already at the statutory maximum of $37,500, an upward adjustment for negligence will not be applied.

Other Adjustment Factors: No other adjustment factors were applied to the penalty. At the time of the penalty calculation, EPA had no information to indicate that an adjustment to the penalty regarding good faith efforts to comply, history of noncompliance, ability to pay, or other unique factors would be appropriate.

Comment 1D.

Economic Benefit: Because DOT & PF was able to perform an adequate HW determination for the yellow highway paint using available generator knowledge and information from the MSDS, the only associated cost would be the savings realized from delaying making the determination. Because the cost saving is expected to be less than $200, no economic benefit was calculated for this count.

Count 2. Storage and treatment of hazardous waste without a permit or interim status – waste stored in containers

BACKGROUND:
Section 3005 of RCRA prohibits the treatment, storage or disposal of hazardous waste without a permit or interim status, and the regulation at 40 C.F.R. § 270.1(c) requires a RCRA permit for the treatment, storage or disposal of any hazardous waste identified or listed in 40 C.F.R. Part 261. Generators of hazardous waste are allowed to accumulate hazardous waste on-site without a permit or interim status, provided that they comply with certain conditions set forth in 40 C.F.R. § 262.34. These conditions require that containers used to store hazardous waste must be labeled or marked clearly with the words "Hazardous Waste" and marked with the date on which each period of accumulation begins, and that containers of hazardous waste must always be closed unless waste is being added or removed. Because DOT & PF failed to meet the conditions for container management, they required a permit or interim status to store and treat hazardous waste.

During the EPA inspection, there were four drums (two in the hazardous waste storage area and two in the Sand Shed) that were not labeled as "Hazardous Waste" and were not marked with accumulation start dates. Neither of the two drums in the Sand Shed was closed, and waste was not being added or removed. The total volume of waste in the four drums was approximately 150 gallons. According to DOT & PF's response to EPA's information request, the contents of the four drums were identified as hazardous waste following the inspection. As this matter is more fairly viewed for penalty purposes as a failure to comply with conditions necessary to qualify for the permit exemption rather than a failure to obtain a permit for HW treatment and storage, a penalty was calculated based on the failure to comply with the conditions at 40 C.F.R. § 262.34 rather than on the failure to have a permit. This approach is consistent with a decision by the Environmental Appeals Board that a penalty based on a failure to have a permit where the facility is not really a TSD facility fails to reflect the true seriousness of the violation. *In re M.A. Bruder and Sons, Inc.* 10 E.A.D. 598, 612 (2002).

Penalty Summary Table:

Count 2. Storage and treatment of hazardous waste without a permit or interim status – waste stored in containers		
A. Gravity Based Penalty Potential for Harm: Moderate Extent of Deviation: Major Middle of the Penalty Matrix Cell	$13,455	Comment 2A
B. Multi-day Penalty none	--	Comment 2B
Total Gravity Based Penalty	$13,455	
C. Adjustment Factors		Comment 2C
• Good Faith:	--	
• Willfulness/Negligence:	--	
• History of Noncompliance:	--	
• Other Unique Factors:	--	
Total Base Penalty	$13,455	
D. Economic Benefit	--	Comment 2D
Total Penalty	**$13,455**	

Comment 2A.

Potential for Harm: Moderate. DOT & PF's mismanagement of the HW drums caused a significant potential for a release to the environment or a human exposure. Failure to mark containers of hazardous waste with the words "Hazardous Waste" could result in mismanagement, including improper disposal of the waste. Failure to mark the accumulation start date on containers could have caused the waste to remain in storage beyond the 270-day accumulation time limit for storage without a permit. Failure to close the drums increases the potential for a human exposure or environmental release. In this case, the facility took minor precautions to prevent the waste from being released into the environment. The waste in the first two drums was placed in closed containers and managed in the facility's Hazardous Waste Storage Area, which was a bermed concrete area surrounded by a fence. The waste in the Sand Shed was not in closed containers, but was stored in a covered, 3-sided building. The mismanaged HW containers had a significant adverse effect on the RCRA program because labeling, dating, and closing HW containers are fundamental factors in ensuring proper management of HW without a permit. During the inspection, the facility representative could not identify the waste in the unlabeled containers.

Extent of Deviation: Major. Labeling, dating, and closing HW containers are some of the most important conditions to store and treat hazardous waste without a permit. DOT & PF deviated from requirements of the RCRA regulations to such an extent that these important aspects of the requirements were not met, resulting in substantial noncompliance.

Selection of the exact penalty amount: According to the RCPP, the moderate/major penalty cell has a penalty range of $11,330 – 15,580. The penalty should not be at the top of the cell because the facility took minor precautions to prevent exposure or release by storing the drums of HW in the hazardous waste storage area and in the Sand Shed. The penalty should not be at the bottom of the cell because DOT & PF failed to meet fundamental conditions of the RCRA program to accumulate hazardous waste without a permit. Given the seriousness of the violation and the size and sophistication of DOT & PF, a penalty at the midpoint of the cell was selected: $13,455.

Comment 2B.

Multi-day Penalty: According to the RCRA Civil Penalty Policy, multi-day penalties are presumed appropriate for days 2-180 for violations designated as moderate potential for harm/major extent of deviation. In this case, the inspector only observed the containers being mismanaged on the day of the inspection, so a multi-day penalty for this violation is not warranted.

Comment 2C.

Adjustment Factors: No adjustment factors were applied to the penalty. At the time of the penalty calculation, EPA had no information to indicate that an adjustment to the penalty regarding good faith efforts to comply, willfulness/negligence, history of noncompliance, ability to pay, or other unique factors would be appropriate.

Comment 2D.

Economic Benefit: The Agency considers the least expensive means of compliance when calculating economic benefit. The least expensive way for DOT & PF to properly manage their containers of hazardous waste would be to follow the conditions for accumulating HW onsite without a permit set forth in 40 C.F.R. § 262.34, which include labeling, dating, and closing the containers. The least expensive way to meet these conditions would be to use a marker to write the words "Hazardous Waste" on the containers, along with the accumulation start date. The cost of a marker is approximately $5. It would have likely taken an Environmental Coordinator approximately half an hour to label, date, and

close the four containers of hazardous waste that were stored illegally. According to the 1997 Manual for Estimating Costs for the Economic Benefit of RCRA Noncompliance, the labor rate for an Environmental Coordinator was $50/hour (or $25/half an hour). Because the cost is expected to be less than $200, no economic benefit was calculated for this count.

Count 3. Storage and treatment of hazardous waste without a permit or interim status – waste placed into the pit; and

Count 4. Failure to operate the facility in order to prevent releases

As a consequence of Respondent's failure to obtain a permit or interim status for the hazardous waste pit (Count 3), Respondent failed to design, construct, maintain and operate the pit to minimize the possibility of a fire, explosion, or release of hazardous waste (Count 4). Therefore, for purposes of the penalty, Count 3 and Count 4 will be compressed. A single penalty will be pursued for the two violations that is sufficient to deter similar future violations and is appropriate given the gravity of the violations.

BACKGROUND:
Count 3: Storage and treatment of hazardous waste without a permit or interim status
Section 3005 of RCRA prohibits the treatment, storage or disposal of hazardous waste without a permit or interim status, and the regulation at 40 C.F.R. § 270.1(c) requires a RCRA permit for the treatment, storage or disposal of any hazardous waste identified or listed in 40 C.F.R. Part 261.

Respondent placed approximately 250 gallons of off-spec liquid yellow highway paint hazardous waste into a pit in June or July of 2009. According to DOT & PF's response to the EPA's information request, the paint was removed from the pit in August 2010. The waste was stored and treated in the pit for at least thirteen months.

Treatment by evaporation was used to dry the paint waste in the pit. "Prior to constructing the pond (pit), DOT & PF asked the local landfill how the unusable paint would need to be treated for disposal at the landfill and was told to dry it first. The intent of the pond (pit) was to solidify the paint within the liner" (quote from information request response). DOT & PF did line the pit with two sheets of plastic to keep the paint within the pit. The use of the pit appeared to be a one-time event. It did not appear to be a regular practice at the facility and was used to deal with the unique occasion of the receipt of an unusable batch of paint that was large in volume.

Count 4. Failure to operate the facility in order to prevent releases
40 C.F.R. § 264.31 requires that facilities must be designed, constructed, maintained, and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

The facility's placement of hazardous waste into an unmonitored land-based treatment unit created a substantial likelihood of a sudden or non-sudden release of hazardous waste constituents to air and soil. The pit did not have adequate freeboard and had containment berms on only two sides. According to DOT & PF's response to EPA's information request, "no monitoring equipment was installed in the pond." As the average annual precipitation in Soldotna is 20 inches, there is a substantial potential that during the time that the waste paint was in the pit (13 or 14 months), precipitation could have caused the waste in the pit to overflow the side barriers, resulting in a release to the soil. Releases to the air also

likely occurred, as the waste paint contained solvents and the pit was uncovered, which would allow volatile organic compounds (VOCs) to be released to the air. Because the waste paint was ignitable hazardous waste, placing the waste into the pit also created a higher risk of fire. As the VOCs were volatilizing, a fire could have occurred, causing a significant potential for harm to human health. DOT & PF's failure to operate their facility to prevent releases, by placing the waste paint in the pit, created a substantial potential for human exposure or a release to the environment.

Penalty Summary Table:

Count 3. Storage and treatment of hazardous waste without a permit or interim status – waste placed into the pit; and Count 4. Failure to operate the facility in order to prevent releases		
A. Gravity Based Penalty Potential for Harm: Major Extent of Deviation: Major Bottom of the Penalty Matrix Cell	$28,330	Comment 3A
B. Multi-day Penalty 179 days at $1,420	$254,180	Comment 3B
Total Gravity Based Penalty	$282,510	
C. Adjustment Factors		Comment 3C
• Good Faith:	--	
• Willfulness/Negligence:	--	
• History of Noncompliance:	--	
• Other Unique Factors:	--	
Total Base Penalty	$282,510	
D. Economic Benefit	$2,484	Comment 3D
Total Penalty	**$284,994**	

Comment 3A.

Potential for Harm: Major. In placing the paint waste in the pit, DOT & PF treated and stored hazardous waste in an unmonitored land-based management unit without a permit or interim status and failed to operate the facility to prevent releases, both of which caused a substantial potential for a release to the environment or a human exposure. DOT & PF's creation of an unpermitted land-based unit to treat and store hazardous waste had a substantial adverse effect on the RCRA program, because a permit is required to store or treat hazardous waste in something other than a container, tank, drip pad, or containment building.

Extent of Deviation: Major. DOT & PF's creation of an illegal land-based unit to treat and store hazardous waste demonstrates substantial noncompliance with the RCRA regulations. DOT & PF also failed to meet important aspects of the requirements to manage the waste paint to minimize the possibility of release. By failing to obtain a permit to store and treat hazardous waste and failing to operate their facility to prevent releases, DOT & PF deviated substantially from the requirements of the program.

Selection of the exact penalty amount: According to the RCPP, the major/major penalty cell has a penalty range of $28,330 – 37,500. The penalty should not be at the top of the cell because the pit was relatively small in size and held a relatively small volume of waste. The location of the pit was far enough from any environmentally sensitive areas that the volume of waste would have posed a relatively

low risk. DOT & PF also lined the pit with two sheets of plastic, taking some precaution to keep the paint within the pit. A penalty at the bottom of the cell has been selected: $28,330. These counts include additional penalties for multi-day violations for the length of time that the waste was stored and treated in the pit. The penalty at the bottom of the multi-day cell is $1,420, therefore the multi-day penalty will be $254,180 (179 x $1,420), which when added to the initial gravity-based penalty of $28,330, yields a total base penalty of $282,510 for Counts 3 and 4.

Comment 3B.

Multi-day Penalty: According to the RCRA Civil Penalty Policy, multi-day penalties are assessed for days 2-180 for all violations designated as major potential for harm/major extent of deviation. According to the RCPP, the major/major multi-day penalty cell has a range of $1,420 – 7,090. The hazardous waste placed in the pit was stored at the facility for approximately two years and seven months from the time of generation. Accordingly, a multi-day penalty is appropriate. As discussed above, a multi-day penalty at the bottom of the cell was selected, at $1,420 per day for 179 days, which would be $254,180 ($1,420 x 179).

Comment 3C.

Adjustment Factors: No adjustment factors were applied to the penalty. At the time of the penalty calculation, EPA had no information to indicate that an adjustment to the penalty regarding good faith efforts to comply, willfulness/negligence, history of noncompliance, ability to pay, or other unique factors would be appropriate.

Comment 3D.

Economic Benefit: The Agency considers the least expensive means of compliance when calculating economic benefit. The least expensive way for DOT & PF to properly manage the unusable paint would have been to leave it in the tote in which it was received and manage it in accordance with conditions for accumulating HW onsite without a permit set forth in 40 C.F.R. § 262.34, including labeling, dating, and closing the containers. After being stored on-site for less than 90 days, the waste paint would have been shipped to a hazardous waste landfill. While the waste was on site, the least expensive way to meet the conditions would be to use a marker to write the words "Hazardous Waste" on the tote, along with the accumulation start date of when the paint was determined to be unusable. The cost of a marker is approximately $5. It would have likely taken an Environmental Coordinator approximately half an hour to label, date, and close the tote. Preparation of the waste and the manifest for shipping would have likely taken an Environmental Coordinator approximately half an hour. According to the 1997 Manual for Estimating Costs for the Economic Benefit of RCRA Noncompliance, the labor rate for an Environmental Coordinator was $50/hour (or $25/half an hour), which the BEN model adjusts for inflation. The cost for Emerald to transport and dispose of the waste was based on a work estimate provided by DOT & PF in their response to EPA's information request. According to the estimate dated April 26, 2010, it cost $2064.22 to ship and dispose of four drums of hazardous waste from the Soldotna facility at Emerald's facility in Tacoma, Washington. The fees for transporting and disposing of a 250-gallon tote were assumed to be the same as the fees for 4 drums with a total volume of approximately 220 gallons, so the estimated cost of shipping and disposal of the waste paint from the pit would have been $2064 on April 26, 2010. The BEN model adjusts this value for inflation. The facility avoided these four costs ($5, $25, $25, $2064) by placing the unusable paint into the pit instead of managing it as hazardous waste. According to DOT & PF's response to EPA's information request, the paint waste placed into the pit in June or July 2009. Therefore, the date of noncompliance was entered into the BEN model as July 31, 2009, as the latest possible date that the paint was placed into the pit. The return to compliance date used for purposes of the penalty calculation was the date that the waste was

permanently disposed at the local landfill, February 23, 2012. According to the BEN model, the economic benefit to the facility for avoiding this cost was $2,484.

Count 5. Failure to comply with Land Disposal Restriction (LDR) treatment standards

According to 40 C.F.R. § 268.2, "land disposal" means placement in or on the land, except in a corrective action management unit or staging pile, and includes, but is not limited to, placement in a surface impoundment. The placement of the yellow highway paint waste in the pit at the DOT & PF facility would be considered land disposal, and therefore subject to the LDR requirements.

BACKGROUND:
Pursuant to 40 C.F.R. §§ 268.34 and 268.37, land disposal of the yellow highway paint, which was a D001, D007, and D008 hazardous waste, is prohibited unless it meets applicable treatment standards specified at 40 C.F.R. § 268.40.

Under 40 C.F.R. § 268.40(a), a prohibited waste may be land disposed only if it meets the treatment requirements specified at 40 C.F.R. § 268.40. DOT & PF failed to ensure that the paint met LDR treatment standards before land disposal of the waste in the pit, including the requirement to deactivate the waste to remove its ignitability characteristic, in violation of 40 C.F.R. § 268.34, 268.37 and 268.40(a).

Penalty Summary Table:

Count 5. Failure to comply with Land Disposal Restriction (LDR) treatment standards		
A. Gravity Based Penalty Potential for Harm: Major Extent of Deviation: Major Middle of the Penalty Matrix Cell	$32,915	Comment 5A
B. Multi-day Penalty none	$0	Comment 5B
Total Gravity Based Penalty	$32,915	
C. Adjustment Factors		Comment 5C
• Good Faith:	--	
• Willfulness/Negligence:	--	
• History of Noncompliance:	--	
• Other Unique Factors:	--	
Total Base Penalty	$32,915	
D. Economic Benefit	--	Comment 5D
Total Penalty	**$32,915**	

Comment 5A.
Potential for Harm: Major. Complying with the LDR treatment standards prevents elevated concentrations of hazardous waste from being placed on the ground for land disposal without first being treated. DOT & PF's failure to comply with the treatment standard resulted in an untreated hazardous waste being placed into a land-based treatment unit which had a substantial adverse effect on RCRA LDR statutory purposes. Because the waste was ignitable, placement in the pit created a substantial risk

of fire. As the VOCs were volatilizing, a fire could have occurred, causing a substantial potential for harm to human health.

Extent of Deviation: Major. DOT & PF deviated from the RCRA program by not complying with the LDR treatment standards. This deviation from the RCRA regulations resulted in substantial noncompliance. Because the LDR treatment standards were not met, the hazardous waste paint was improperly land disposed in the pit without first being treated.

Selection of the exact penalty amount: According to the RCPP, the major/major penalty cell has a penalty range of $28,330 – 37,500. The penalty should not be at the bottom of the cell because DOT & PF's failure to comply with the treatment standards resulted in the land disposal of untreated hazardous waste. The penalty should not be at the top of the cell because the location of the pit was far enough from any environmentally sensitive areas that the small volume of paint waste would have posed a relatively low risk. A penalty at the midpoint of the penalty cell has been selected: $32,915.

Comment 5B.
Multi-day Penalty: According to the RCRA Civil Penalty Policy, multi-day penalties are assessed for days 2-180 for all violations designated as major potential for harm/major extent of deviation. However, the paint was placed into the pit on only one occasion and the violation of the prohibition on land disposal occurred on a single day. Therefore, a multi-day penalty for this violation is not warranted.

Comment 5C.
Adjustment Factors: No adjustment factors were applied to the penalty. At the time of the penalty calculation, EPA had no information to indicate that an adjustment to the penalty regarding good faith efforts to comply, willfulness/negligence, history of noncompliance, ability to pay, or other unique factors would be appropriate.

Comment 5D.
Economic Benefit: The Agency considers the least expensive means of compliance when calculating economic benefit. Because DOT & PF did not have a permit for land disposal or land treatment at the facility, the least expensive way for DOT & PF to comply with the treatment standards would have been to follow the generator requirements and properly dispose of the waste, which was addressed in the Economic Benefit calculation for Count 3. Because the cost of Economic Benefit was included in Count 3, it will not be assessed again for Count 5.

Count 6. Failure to make a Land Disposal Restriction (LDR) treatment determination; and

Count 7. Failure to send a Land Disposal Restriction (LDR) notification

As a consequence of DOT & PF's failure to make an LDR treatment determination as required by 40 C.F.R. § 268.7(a)(1), DOT & PF failed to send an LDR notification as required by 40 C.F.R. § 268.7(a)(2). Therefore, for purposes of the penalty, Count 6 and Count 7 will be compressed. A single penalty will be pursued for the two violations that is sufficient to deter similar future violations and is appropriate given the gravity of the violations.

BACKGROUND:
Count 6. Failure to make a Land Disposal Restriction (LDR) treatment determination
40 C.F.R. § 268.7(a) sets forth the testing, tracking and recordkeeping requirements for generators of hazardous waste that choose to land dispose their waste. 40 C.F.R. § 268.7(a)(1) states that a generator

of hazardous waste must determine if the waste has to be treated before it can be land disposed. This is done by determining if the hazardous waste meets the treatment standards in 40 C.F.R. § 268.40. This determination can be made concurrently with the hazardous waste determination required in 40 C.F.R. § 262.11, in either of two ways: testing the waste or using knowledge of the waste.

DOT & PF was required to determine if the waste paint had to be treated before it could be land disposed in the pit. There is no evidence that DOT & PF made this determination at any point before the waste was placed into the pit.

Count 7. Failure to send a Land Disposal Restriction (LDR) notification
40 C.F.R. § 268.7(a)(2) requires that if the waste does not meet the treatment standards, or if the generator chooses not to make the determination of whether his waste must be treated, the generator must send a one-time written notice to each treatment or storage facility receiving the waste with the initial shipment of the waste, and place a copy in the file.

After the paint had been solidified in the pit, but before it was disposed of at the municipal landfill, the sample results indicated that the lead concentration in the dried paint was 2.89 mg/L, which exceeds the LDR treatment standard for lead (0.75 mg/L lead). Because the paint did not meet the treatment standard or because Respondent chose not to make the determination of whether his waste must be treated, DOT & PF was required to notify the municipal landfill. 40 C.F.R. § 268.7(a)(2) requires that the notice include: EPA hazardous waste numbers and the manifest number of the first shipment, if the waste is subject to LDRs, the applicable wastewater/non-wastewater category and subdivisions made within a waste code based on waste-specific criteria, and waste analysis data. Although DOT & PF provided the sample results to the landfill, there is no evidence that the landfill was notified of the other required details.

According to DOT & PF's response to EPA's information request, DOT & PF disposed of the solidified paint from the pit in the lined cell at the municipal landfill (CPL) on February 23, 2012. DOT & PF failed to send a one-time written notice to the facility that was receiving the waste that it did not meet the LDR treatment standards. As a result of DOT & PF's failure to notify the receiving facility, employees at the landfill were not aware of the treatment requirements and of the potential health risks of exposure and may not have taken appropriate precautions.

Penalty Summary Table:

Count 6. Failure to make a Land Disposal Restriction (LDR) treatment determination; and Count 7. Failure to send a Land Disposal Restriction (LDR) notification		
A. Gravity Based Penalty Potential for Harm: Major Extent of Deviation: Major Top of the Penalty Matrix Cell	$37,500	Comment 6A
B. Multi-day Penalty none	$0	Comment 6B
Total Gravity Based Penalty	$37,500	
C. Adjustment Factors		Comment 6C
• Good Faith:	--	
• Willfulness/Negligence:	--	

• History of Noncompliance:	--	
• Other Unique Factors:	--	
Total Base Penalty	$37,500	
D. Economic Benefit	--	Comment 6D
Total Penalty	**$37,500**	

Comment 6A.

Potential for Harm: Major. Making an LDR determination prevents elevated concentrations of hazardous waste from being land disposed without treatment. DOT & PF's failure to make this determination before placing the waste paint into the pit resulted in a substantial risk of exposure to the environment. DOT & PF also failed to provide the required notice to the receiving facility, which resulted in an increased potential for an environmental release at the municipal landfill. Also as a result of DOT & PF's failure to notify the facility receiving the waste, employees at the landfill were not aware of the potential health risks of exposure and may not have taken appropriate precautions. Failure to meet the LDR requirements has a substantial adverse effect on the implementation of the RCRA program because it undermines statutory land disposal treatment requirements.

Extent of Deviation: Major. DOT & PF deviated from the RCRA requirements by not making an LDR determination or properly notifying the receiving facility. No effort was made to satisfy LDR requirements. This deviation from the RCRA regulations resulted in substantial noncompliance, because essentially all LDR requirements were not met.

Selection of the exact penalty amount: According to the RCPP, the major/major penalty cell has a penalty range of $28,330 – 37,500. The penalty should not be at the bottom of the cell because of the size and sophistication of DOT & PF. Because they failed to address two fundamental aspects of the LDR requirements, the penalty should be above the midpoint of the cell. A penalty at the top of the penalty cell has been selected: $37,500.

Comment 6B.

Multi-day Penalty: According to the RCRA Civil Penalty Policy, multi-day penalties are assessed for days 2-180 for all violations designated as major potential for harm/major extent of deviation. However, all of the violations in Count 6 and Count 7 (i.e., determining if the waste paint had to be treated before it could be land disposed and sending a notice to the disposal facility) are one-time activities, so multi-day penalties for these counts would not be appropriate.

Comment 6C.

Adjustment Factors: No adjustment factors were applied to the penalty. At the time of the penalty calculation, EPA had no information to indicate that an adjustment to the penalty regarding good faith efforts to comply, willfulness/negligence, history of noncompliance, ability to pay, or other unique factors would be appropriate.

Comment 6D.

Economic Benefit: The Agency considers the least expensive means of compliance when calculating economic benefit. The least expensive way for DOT & PF to decide if the waste paint had to be treated before being land disposed would have been to make that determination while making a HW determination at the point of generation. DOT & PF could have filled out the LDR paperwork indicating that the waste did not meet the treatment standards, which would have been the least expensive way to satisfy notification requirements. These two activities would likely take an

Environmental Coordinator about half an hour each, for a total of one hour. According to the 1997 Manual for Estimating Costs for the Economic Benefit of RCRA Noncompliance, the labor rate for an Environmental Coordinator was $50/hour. Because the cost is expected to be less than $200, no economic benefit was calculated for this count.

Count 8. Failure to obtain an EPA RCRA generator identification number

BACKGROUND:
40 C.F.R § 262.12(a) requires that a generator must not treat, store, dispose of, transport, or offer for transportation hazardous waste without having received an EPA identification number from the Administrator. 40 C.F.R. § 260.10 defines a generator as any person by site who produces hazardous waste.

During the inspection, Respondent stated that DOT & PF has operated at 46445 Sterling Highway, Soldotna, Alaska, since 1999, using RCRA identification number AKD980974182, which was assigned to Sterling Hwy Mile 96, Soldotna, Alaska. Because RCRA generator identification numbers are assigned to a specific geographic location, Respondent did not have a valid identification number at the time of the inspection, although they were operating as a large quantity generator of hazardous waste, storing and treating hazardous waste, and offering hazardous waste for transport.

In response to the inspection, DOT & PF notified EPA that they had moved to a new location. In response, the facility was issued a new RCRA ID generator number. Therefore, this violation has been corrected.

Penalty Summary Table:

Count 8. Failure to obtain an EPA RCRA generator identification number		
A. Gravity Based Penalty Potential for Harm: Minor Extent of Deviation: Moderate Middle of the Penalty Matrix Cell	$1,420	Comment 8A
B. Multi-day Penalty none	$0	Comment 8B
Total Gravity Based Penalty	$1,420	
C. Adjustment Factors		Comment 8C
• Good Faith:	--	
• Willfulness/Negligence:	--	
• History of Noncompliance:	--	
• Other Unique Factors:	--	
Total Base Penalty	$1,420	
D. Economic Benefit	--	Comment 8D
Total Penalty	**$1,420**	

Comment 8A.
Potential for Harm: Minor. Failure to obtain an EPA generator ID number undermines the RCRA program. Generator ID numbers are assigned to physical addresses so that the EPA can track and monitor the generation and disposal of hazardous waste. Because DOT & PF had a generator ID number at their previous location, EPA did have a record of the existence of a DOT & PF facility in the

Soldotna area and was aware of the new location. DOT & PF's failure to update their generator ID number when the facility changed locations posed a relatively minor potential for harm.

Extent of Deviation: Moderate. One of the most important factors in ensuring that hazardous waste is properly managed and tracked is the acquisition of a generator ID number by facilities that generate hazardous waste. DOT & PF's failure to notify EPA that they were generating HW at a new location deviated significantly from an important requirement of the RCRA facility and waste tracking program.

Selection of the exact penalty amount: According to the RCPP, the minor/moderate penalty cell has a penalty range of $710 – 2,130. The penalty should not be at the top of the cell because DOT & PF was cooperative and responsive, and obtained a new EPA generator ID number for their current location following the inspection. A penalty at the bottom of the matrix is also not appropriate because of the size and sophistication of DOT & PF. A penalty at the midpoint of the penalty cell has been selected: $1,420.

Comment 8B.
Multi-day Penalty: According to the RCRA Civil Penalty Policy, multi-day penalties are discretionary for violations designated as minor potential for harm/moderate extent of deviation. DOT & PF operated the facility at its current location for at least ten years before EPA received their change of address notification on June 15, 2010. However, the facility originally notified as a CESQG, which does not require a RCRA generator ID number, and was possibly a CESQG for much of the time that they operated at their new location previous to the EPA inspection. A multi-day penalty would not be appropriate.

Comment 8C.
Adjustment Factors: No adjustment factors were applied to the penalty. At the time of the penalty calculation, EPA had no information to indicate that an adjustment to the penalty regarding good faith efforts to comply, willfulness/negligence, history of noncompliance, ability to pay, or other unique factors would be appropriate.

Comment 8D.
Economic Benefit: The Agency considers the least expensive means of compliance when calculating economic benefit. The least expensive way for DOT & PF to correct this violation would be to obtain a RCRA generator ID number. The only cost associated with this would be personnel time required to fill out the form, which would likely take approximately half an hour. According to the 1997 Manual for Estimating Costs for the Economic Benefit of RCRA Noncompliance, the labor rate for an Environmental Coordinator was $50/hour (or $25/half an hour). Because the cost is expected to be less than $200, no economic benefit was calculated for this count.

Count 9. Failure to label a used oil tank with the words "Used Oil"

BACKGROUND:
40 CFR § 279.22(c)(1) requires that aboveground tanks used to store used oil at generator facilities be labeled or marked clearly with the words "Used Oil."

During the inspection, the EPA inspector observed two 225-gallon storage tanks in the Maintenance & Operations (M & O) Shop which the DOT & PF representative identified as containing used oil that is burned on site in a space heater. One of the tanks was not labeled with the words "Used Oil."

Penalty Summary Table:

Count 9. Failure to label a used oil tank with the words "Used Oil"		
A. Gravity Based Penalty Potential for Harm: Minor Extent of Deviation: Moderate Top of the Penalty Matrix Cell	$710	Comment 9A
B. Multi-day Penalty none	$0	Comment 9B
Total Gravity Based Penalty	$710	
C. Adjustment Factors		Comment 9C
• Good Faith:	--	
• Willfulness/Negligence:	--	
• History of Noncompliance:	--	
• Other Unique Factors:	--	
Total Base Penalty	$710	
D. Economic Benefit	--	Comment 9D
Total Penalty	**$710**	

Comment 9A.

Potential for Harm: Minor. Failure to mark used oil tanks and containers with the words Used Oil could result in the used oil being mismanaged and improperly disposed of. In this case, the potential for mismanagement due to improper labeling is low because the facility personnel were able to identify the contents as used oil, and there was another used oil tank that was labeled as Used Oil right next to the unlabeled tank. Also, the tank was inside a building, and the facility burns their own used oil in a space heater, so it is not being managed off site. DOT & PF's failure to mark the tank as Used Oil poses a low risk of exposure to humans or other environmental receptors at this facility. Also, the failure to label the tank has a minor adverse effect on statutory or regulatory purposes or procedures for implementing the RCRA program because facility personnel were able to identify the contents as used oil at the time of the inspection and the facility had another nearby tank labeled as used oil.

Extent of Deviation: Moderate. Failure to label the used oil tank deviates from the statutory requirements, although some of the requirements were met because there was another tank nearby that was properly labeled.

Selection of the exact penalty amount: According to the RCPP, the minor/moderate penalty cell has a penalty range of $710 – 2,130. The penalty should not be at the top of the cell because the unlabeled tank was located inside of a building, an area that is not environmentally sensitive, with low potential for human exposure or release to the environment. The penalty should be lower than the midpoint of the cell because this violation concerns used oil, which is much less hazardous than if the unlabeled tank contained hazardous waste. A penalty at the bottom of the cell was selected: $710.

Comment 9B.

Multi-day Penalty: According to the RCRA Civil Penalty Policy, multi-day penalties are discretionary for violations designated as minor potential for harm/moderate extent of deviation. In this case, the violation was observed only on the day of the inspection and it is possible that the facility labeled the tank immediately following the inspection, though that has not been confirmed. In this case, a multi-day penalty for this violation would not be appropriate.

Comment 9C.

Adjustment Factors: No adjustment factors were applied to the penalty. At the time of the penalty calculation, EPA had no information to indicate that an adjustment to the penalty regarding good faith efforts to comply, willfulness/negligence, history of noncompliance, ability to pay, or other unique factors would be appropriate.

Comment 9D.

Economic Benefit: The Agency is directed to consider the least expensive means of compliance when calculating economic benefit. The least expensive way for DOT & PF to properly manage the tank of used oil would be to label the tank with the words "Used Oil." This could have been accomplished with a marker and less than an hour of personnel time which would be expected to be less than $200. No economic benefit was calculated for this count.